



GRA

GHANA REVENUE AUTHORITY

**Practice Note on Obtaining Double Taxation Relief
under the Income Tax Act, 2015 (Act 896)**

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1.0 Preamble

Ghana has entered into international arrangements that provide that income accruing in or derived from Ghana or some other amount is exempt from Ghanaian tax or is subject to a reduction in the rate of Ghanaian tax. The main arrangements are in the form of Double Taxation Agreements. This Practice Note is issued in respect of how to obtain tax exemption and reliefs under Double Taxation Agreement.

2.0 Interpretation

In this Practice Note the word “Act” means the Income Tax Act, 2015 (Act 896). Definitions and expressions used in this Practice note have the same meaning as they have in the Act. The contents are based on the provisions of the Double Taxation Agreements between Ghana and other countries and provisions of relevant tax laws.

3.0 Purpose of this Practice Note

This Practice Note is issued for the information of the general public, particularly all resident and non-resident taxpayers, taxpayers’ representatives or advisers and the staff of the Ghana Revenue Authority on Ghana’s double taxation agreements. The purpose of the practice note is to explain the various benefits that are available to taxpayers the procedures required to benefit from the concessions and the documentation required to support any claims for exemptions, reliefs and use of reduced tax rates.

4.0 Application of the law

A Tax Treaty otherwise known as Double Taxation Agreement (DTA) can be described as bilateral agreement between two countries (otherwise known as Contracting States) with the aim of ensuring that a resident of one or both of the contracting states is not taxed twice on the same income in both jurisdiction or unduly benefit from not paying appropriate taxes in any of the countries through tax evasion or avoidance. The Agreement covers taxes on income and capital only.

This Practice Note is issued to provide general explanations regarding the following:

- a) The applicable DTAs between Ghana and other contracting states
- b) Entitlement to Treaty Benefits in Ghana
- c) Available Treaty Benefits and Tax Rates

- d) Processes of obtaining treaty benefits

5.0 Ghana's DTAs with Contracting States

Ghana's DTAs can be downloaded from GRA website: <https://gra.gov.gh/double-taxation-agreements/>

6.0 Entitlement to Treaty Benefits in Ghana

There are requirements that must be met before a taxpayer can be entitled to benefits under a tax treaty. The extent of tax relief or benefits that may be granted will depend on the specific provisions contained in a specific DTA.

6.1 Who is entitled to Treaty Benefits in Ghana?

The following conditions must be satisfied before a taxpayer may be entitled to treaty benefits under a DTA between Ghana and another country:

The taxpayer must:

- a) be a resident of Ghana.
- b) be resident of the treaty partner; or
- c) be a resident of both Ghana and the treaty partner
- d) be a beneficial owner of the income
- e) meet any Limitation of Benefits (LoB) or Entitlement to Benefits provisions contained in the treaty, where applicable.

It should be noted that a resident of another country will not be entitled to any benefit under a tax treaty between Ghana and any of her contracting treaty partners.

6.2 Conditions for Deriving Benefits under any of the DTAs

In addition to above, the following conditions must be present in order to take advantage of the concessions provided by a DTA:

- a) The taxpayer is liable to tax in the treaty country of which that taxpayer is a resident.
- b) The income in question is not exempted from tax in Ghana.
- c) The tax in question is covered by the DTA.
- d) The benefit is not specifically excluded under the DTA.

- e) The benefit is claimed within the time stipulated by the treaty or domestic laws.

6.3 Denial of Treaty Benefits

A resident or non-resident taxpayer may be denied DTA benefits if:

- a) based on facts and circumstances, it is discovered that the taxpayer's residency was obtained for the sole purpose of accessing benefits under the DTA (treaty shopping); or
- b) It is discovered after careful review of the case that one of the principal purposes of the arrangement or a transaction or business is to take advantage of the treaty or abuse its provisions.

7.0 Available Treaty Benefits

The benefits and reliefs that are available under DTA between Ghana and other countries are as follows:

- a) Relief from double taxation, in a form of tax credits or deductions of foreign tax paid from tax payable in Ghana by a Ghanaian resident in order to eliminate double taxation.
- b) DTA withholding tax rates for passive income or fees for technical service derived from Ghana by residents of a treaty partner.
- c) DTA tax rates to foreign airlines or shipping companies or exemption of their income from tax.
- d) Access to Mutual Agreement Procedure (MAP) for dispute resolution.
- e) Non-Discrimination in Taxation Matters.

7.1 Relief from Double Taxation (Tax Credit)

Where a resident of Ghana has paid foreign tax on an income derived from a treaty partner of Ghana, the Article on Elimination of Double Taxation in Ghana's tax treaties as supported by Section 112 and 122(4) of Income Tax Act, 2015 (Act 896), allows for a credit relief against similar tax payable in Ghana by that resident. The amount of foreign tax paid is deductible from the tax payable in Ghana on the same income.

However, Section 112(2)(b) of Act 896 restricts the tax credit allowable to an amount not exceeding the average rate of Ghanaian income tax of the person for the assessable year i.e. the rate of tax credit claimable is restricted to the average Ghanaian rate of tax on that income.

Consequently, a Ghanaian taxpayer, who is liable to tax in a country with a higher tax rate than that of Ghana, will be entitled to only partial relief of an amount equivalent to the amount that is derived using the Ghana tax rate on the income.

A taxpayer who is liable to tax in a country with a lower tax rate will be entitled to full relief of the foreign tax paid.

Additionally, Section 112(3) of Act 896 allows a person to either use a foreign tax credit as a relief against tax payable for a year of assessment or claim a deduction for the amount of the income tax paid to the foreign country.

A claim for deduction is not available for income tax paid to a foreign country unless a person elects to relinquish the foreign tax credit. An election can only be done through the submission of an application to the Commissioner-General or by accompanying the tax return with a disclosure memo.

A foreign tax credit will be granted upon submission to the Commissioner-General a tax credit certificate, an official receipt or a functional equivalent of a tax credit certificate from the tax department of a foreign country.

7.1.1. Computation of Tax Credit that is Claimable:

The example below illustrates the computation of claims for tax credit in Ghana:

Fact

XYZ Limited is a Ghanaian Company, which commenced business in June 2002. The company paid income tax of \$750 and \$2,100 in Belgium on its taxable profits of \$3,000 and \$6,000 for 2015 and 2016 years of assessment respectively, with respect to its branch, which qualifies as a permanent establishment in Belgium. The Total Profits of the company in Ghana in those respective tax years, based on its worldwide income, are GHs6 million and GHs8 million. The

tax rate in Ghana is 25%, while Belgium imposes tax at the rate of 25% for income below \$4,000 and 35% for \$4,000 income and above. Ghana and Belgium have a double taxation agreement, with Article 23 of the Agreement providing for credit method of elimination of double taxation. Compute the tax payable in Ghana by the company for the relevant years of assessment (Assume exchange rate of GHs 5.4 to \$1 in both years).

For 2015 Year of Assessment:

Solution-option 1

Tax paid in Belgium = \$750 (i.e. \$3,000 X 0.25)

Tax payable in Ghana:

Total Profit (based on the worldwide income) GHs6,000,000

Ghana's rate of tax = 25%

Tax Liability (6,000,000 X 0.25) = GHs1,500,000

Double Tax credit Relief: (\$750 X GHs5.4) = GHs4,050

Tax payable in Ghana = (GHs1,500,000-GHs4,050*) =GHs1,495,950

Average rate of Ghanaian Income Tax= $\frac{\text{Ghanaian income tax} * 100}{\text{Chargeable income}}$

$$= \frac{1,500,000 * 100}{6,000,000} = 25\%$$

*Since Belgium tax rate (25%) and Average Ghanaian Income tax (25%) are equal XYZ Limited will be granted the full tax credit relief of GHs 4,050.

Solution-option 2

If XYZ Limited elect to relinquish the foreign tax credit claim and claim a deduction for the income tax paid to the foreign country, tax liability is calculated as follows:

Tax paid in Belgium = \$750 (i.e. \$3,000 X 0.25)

Tax payable in Ghana:

Total Profit (based on the worldwide income) GHs6,000,000

Chargeable income = total profit less income tax paid to the foreign country
 =GHs6,000,000- 4,050 =5,995,950

Ghana's rate of tax = 25%

Tax Liability (5,995,950 X 0.25) = GHs1,498,987.

For 2016 Year of Assessment:

Solution-option 1

Tax payable in Belgium = \$2,100 (i.e. \$6,000 X 0.35)

Tax payable in Ghana:

Total Profit (based on the worldwide income) 8,000,000

Ghana's rate of tax = 25%

Tax Liability (8,000,000 X 0.25) = GHs2,000,000

*Double Tax credit Relief: *(\$6,000 X 0.25 X GHs5.4) = GHs 8,100*

Tax payable in Ghana = (GHs 2,000,000-GHs 8,100) =GHs 1,991,900

*Average rate of Ghanaian Income Tax = $\frac{2,000,000}{8,000,000} * 100 = 25\%$*

**Note: when the rate of tax imposed on the foreign income is higher than the Ghanaian rate of tax, the maximum credit that may be given in Ghana is restricted to the amount which is equivalent to that derived using the Average rate of Ghanaian income tax on the foreign income.*

Solution-option 2

If XYZ Limited elect to relinquish the foreign tax credit claim and claim a deduction for the income tax paid to the foreign country, tax liability is calculated as follows

Tax paid in Belgium = \$2,100 (i.e. \$6,000 X 0.35)

Tax payable in Ghana:

Total Profit (based on the worldwide income) GHs8,000,000

*Chargeable income = total profit less income tax paid to the foreign country
=GHs8,000,000- 8,100 =7,991,900*

Ghana's rate of tax = 25%

Tax Liability (7,991,900X 0.25) = GHs1,997,975

7.1.2. Time Allowed to Claim Tax Credit

In line with the relevant provisions of Act 896, a claim for tax credit can only be made at the end of the year of assessment in which the foreign tax was paid. For example, foreign tax paid in 2014 year of assessment cannot be claimed after 2015 year of assessment (YOA). The taxpayer may elect to relinquish a foreign tax credit available for a YOA and instead claim a deduction for income tax paid abroad.

7.2 Treaty Withholding Tax Rate on Passive Income and Technical Service Fee

The Articles regarding Dividends, Interests, Royalties and Technical Service Fees in the DTA's between Ghana and other countries may sometimes provide lower applicable rates for withholding tax (WHT) on passive income and technical service fees than those contained in the domestic laws.

The DTA WHT rate is only applicable in Ghana when payments are made to non-residents and the payments are not connected to a Permanent Establishment that the non-resident has in Ghana, while for Ghanaian residents the DTA WHT are to be granted to them by the other treaty countries when payments are made to them from a source in those other countries.

7.2.1 Applicable WHT Rates

The WHT rates applicable to the existing tax treaties in force in Ghana. Please find details attached on Appendix B

7.2.2 Entitlement to the DTA WHT Rate

In addition to fulfilling the conditions for the entitlement to treaty benefits as contained in paragraph 5.3 of this Practices Notes, the following conditions must also be fulfilled for the treaty WHT to apply:

7.2.2.1 Beneficial Owner (BO)

A beneficial owner is a person who receives the item of income for the person's use and enjoyment and assumes the risk and control of the item of income received. The beneficial owner of the income must be a resident of the other treaty partner, even if the income was not paid directly to him. Where a dividend is paid by a Ghanaian

company directly to a resident of Ghana's treaty partner but for the benefit of a resident of Ghana or another country, the treaty rate on dividend will not be applicable. On the other hand, the treaty rate will be applicable if the dividend is paid to a resident of another country but for the benefit of a resident of the treaty country.

Example 1,

Where a DTA exist between Ghana and UK, and a resident Ghanaian company pays dividend to a resident of UK, however the ultimate beneficiary owner of the dividend is a resident of Kosovo, not a treaty partner with Ghana, then treaty rate on dividend will not be applicable to the dividend paid. On the other hand, the treaty rate will be applicable if the dividend is paid a resident of Kosovo but for the benefit of a resident of UK.

Example 2,

Where a resident Ghanaian company pays dividend to a resident of Ghana, and the beneficial owner is a resident of UK, the treaty rate will be applicable to the dividend paid. On the other hand, if the ultimate beneficiary owner of the dividend is a resident of Ghana, the prevailing domestic tax rate on dividend will apply.

7.2.2.2 Absence of Permanent Establishment (PE)

The income must not relate to a PE, which the beneficiary has in the paying country. The treaty WHT will not be applicable where the non-resident beneficial owner of the income carries on a business in Ghana through a PE and the income is connected to that PE.

7.2.3. Application of Treaty WHT Rate to Rental Income

Rental incomes are covered under two separate Articles in the tax treaties as follows:

7.2.3.1 The Article on Income from Immovable Property

This Article covers rental income derived from the direct use, letting, or use in any other form of immovable property, such as land, building, plantation and forestry, including royalties for the exploitation of mineral deposits and other natural resources. The treaty WHT rate is not applicable in the source country in respect of income derived from these properties. For example, where a non-resident derived

rental income from a building situated in Ghana, a treaty WHT rate will not be applicable on such income; instead, the domestic applicable tax rate will be applicable.

7.2.3.1 The Article on Royalties

The definition of “Royalties” in some tax treaties includes income from lease of equipment (i.e. the right to use, industrial, commercial or scientific equipment). The treaty WHT rate applicable to “Royalties” in the tax treaty will also be applicable to the rental income from lease of equipment. For example, where a non-resident derived rental income from the lease of aircraft, ship, machinery or oil rig to a resident of Ghana, the treaty WHT rate on royalties will be applicable to such rental income.

7.3. Treaty Rate of Ghanaian Tax for Non-Residents Operating in International Traffic

The Article on “International Traffic” or “International Transport” in the DTAs between Ghana and other countries moderates the provision of Section 7 of Income Tax Act, 2015 (Act 896). The Article deals with the sharing of taxing right between Ghana and the treaty partner on the income from shipping and air transport. The Article covers income from international shipping and air transport, but for neighboring countries, the Article may also cover income from boats, trains and road vehicles operated in international traffic. In any case, the scope of coverage may be identified from the definition of international traffic in the Article on General Definitions in the Agreement. While the general rule in tax treaties is to give the exclusive or sole taxing right to the resident or home country of the airline or shipping company, in most of Ghana’s DTAs, the Article moderates the provision of Section 7(f) of Act 896 as follows:

“Where there is reciprocity in international traffic between Ghana and the home country of the foreign airline or shipping company i.e. where any Ghanaian airline or shipping company also operate to the home country of the foreign airline or shipping company in the year of assessment, then the foreign airline or shipping company will be exempted from tax at all in Ghana in that year of assessment. In such a case, each country will tax its own airline or shipping company”.

7.4 Access to Dispute Resolution Mechanism through Mutual Agreement Procedure.

Whenever there is a dispute between a resident taxpayer and the tax authority of either Ghana or her treaty partner regarding the interpretation or application of tax treaty provisions regarding the taxation of income of that taxpayer, the DTA provides the taxpayer with access to an easy dispute resolution mechanism through Mutual Agreement Procedure (MAP). The Competent Authority (CA) i.e. the Commissioner General of Ghana is required to interact with the CAs of the other treaty country with a view to resolving disputes arising from the interpretation or application of the tax treaty provisions through mutual agreement and avoiding taxation which is not in accordance with the treaty.

7.5 Non-Discrimination of Ghana Citizens on Taxation Matters

By the operation of the Article on Non-Discrimination in the DTAs, citizens or nationals of Ghana should not be subjected in the other treaty country to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which citizens or nationals of that other treaty country are or may be subjected to in the same circumstances, especially, with respect to residence rule. Likewise, citizens or nationals of Ghana's treaty partners are entitled to tax treatments in Ghana like that applicable to Ghanaians.

Where a Ghanaian has suffered discrimination in taxation matters in any of the countries that has tax treaty with Ghana, such Ghanaian may apply to the CA of Ghana (or the CA of the Treaty Partner where the treaty so provides) for redress through the MAP.

8.0 Procedures for Claiming Treaty Benefits in Ghana

Where a taxpayer has met all the criteria for eligibility for tax treaty benefits as contained in paragraphs 6.1, 6.2 and 6.3 of this practice note, that person may apply for such benefits in line with the following procedures:

8.1. Completion of Certificate of Residence

There are two types of certificates of residence, viz:

- a) Certificate of Residence for Ghanaian residents, which is to be completed by a Ghanaian resident seeking to make treaty claims in another country that has treaty

with Ghana. The certificate is to be endorsed by the CA before it is submitted to the tax authority of the country where the claim is to be made.

- b) Certificate of Residence for non-residents, which is to be completed by a non-resident seeking to access treaty benefits from Ghana. The certificate is to be duly endorsed by the tax authority of the country of residence of the non-resident taxpayer.

8.2. Submission of Formal Application to the Ghana Revenue Authority

To claim treaty benefits, a taxpayer/representative must submit a formal application, addressed to Commissioner General with the following documents attached:

- a) Duly completed Certificate of Residence with official stamp/seal of relevant revenue authority.
- b) For non-resident claiming relief or treaty WHT, evidence to support the income on which the treaty rate is being sought e.g. copy of contract agreement with a Ghanaian resident in the case of royalties and fees for technical service, evidence of shareholding in the case of dividend or loan agreement in the case of interest.

8.3 Submission of Claim for Treaty Benefit

After receiving an approval or ruling for claim of tax treaty benefit from the Ghana Revenue Authority, the taxpayer should:

- a) in the case of WHT DTA rate, submit a copy of the approval or ruling to the WHT collecting agent (e.g. Government ministries, departments, agencies and parastatals, companies, statutory bodies, institutions and other withholding tax (WHT) collecting agents of GRA etc.), to reflect the rate in the WHT deduction.

APPENDIX A

No.	Country	Type	Entry Into Force	Effective Date
1	Belgium	Full DTA	17 th October, 2008	1 st January 2009
2	Denmark	Full DTA	10 th November, 2015	1 st January 2016
3	France	Full DTA	1st April, 1997	1 st January 1998
4	Germany	Full DTA	14 th December, 2007	1 st January 2008
5	Italy	Full DTA	5 th July, 2006	1 st January 2007
6	Netherlands	Full DTA	12 th November, 2008	1 st January 2009
7	South Africa	Full DTA	23 rd April, 2007	1 st January 2008
8	Switzerland	Full DTA	30 th December, 2009	1 st January ,2020
9	United Kingdom	Full DTA	10 th August, 1994	1 st January ,1995
10	Singapore	Full DTA	12 th April 2019	1 st January ,2020
11	Mauritius	Full DTA	22 nd January, 2019	1 st January ,2020
12	Czech Republic	Full DTA		1 st January 2022
13	Morocco	Full DTA		1 st January 2023
14	Qatar	Full DTA	27 th April 2023	1 st January 2024

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APPENDIX B

Ghana - Treaty Withholding Rates Table					
	Dividends		Interest ^[1]	Royalties	Technical & Management Service Fees
	Individuals, companies	Qualifying companies			
	(%)	(%)	(%)	(%)	(%)
Domestic Rates					
Companies:	<u>8</u>	<u>0/8</u> ^[2]	<u>8</u>	<u>15</u>	20
Individuals:	<u>8</u>	n/a	n/a	<u>15</u>	20
Treaty Rates					
Belgium	<u>15</u>	<u>5</u>	<u>10</u>	<u>10</u>	10
Denmark	<u>15</u>	<u>5</u>	<u>0/8</u> ^[3]	<u>8</u>	8
France	<u>15</u>	<u>7.5</u>	<u>12.5</u> ^[4]	<u>12.5</u> ^[4]	10
Germany	<u>15</u>	<u>5</u>	<u>10</u>	<u>8</u>	8
Italy	<u>15</u>	<u>5</u>	<u>10</u>	<u>10</u>	10
Netherlands	<u>10</u>	<u>5</u>	<u>0/8</u> ^[5]	<u>8</u>	8
Singapore ^[6]	<u>7</u>	<u>7</u>	<u>7</u>	<u>7</u>	10
South Africa	<u>15</u>	<u>5</u>	<u>5/10</u> ^[7]	<u>10</u>	10
Switzerland	<u>15</u>	<u>5</u>	<u>10</u>	<u>8</u>	10
United Kingdom	<u>15</u>	<u>7.5</u>	<u>12.5</u>	<u>12.5</u>	10
Mauritius	7	7	7	8	10
Czech Republic	15	6	10	8	8
Morocco	10	5	10	10	10
Qatar	7	5	7	10	10

NOTES:

1. Many treaties provide for an exemption for certain types of interest, e.g. interest paid to or by the state, local authorities, the central bank, export credit institutions, or in relation to sales on credit. Such exemptions are not considered in this column.
2. Dividends distributed by companies established in free zones to non-resident corporate shareholders are exempt.
3. The zero rate also applies to pension funds or other similar institutions (under conditions).
4. Applicable if beneficial owner is subject to tax in France.
5. The zero rate also applies to interest on loans granted by a bank or other financial institution (including an insurance company) or a pension fund.
6. Effective from 1 January 2020.
7. The 5% rate applies if the recipient is a bank.



Signed:

Date: 24/3/24

Ammishaddai Owusu-Amoah
Commissioner-General